

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN THE MATTER OF :
: **CHAPTER 13 CASE**
BLANCA GARCIA, : **COURT NO: 09-22229 (RDD)**
DEBTOR :
: **COURT DATE:**
-----X _____ at __: __AM/PM

**OBJECTION TO PROOF OF CLAIM OF PURSUANT TO RULE 3001(C)
AND MOTION FOR SANCTIONS FOR FILING FALSE PROOF OF CLAIM AND FOR
FILING FALSE OBJECTION TO CONFIRMATION**

COME NOW the above-named debtor, by and through her attorney of record, Linda M. Tirelli, pursuant to Rule 3007 of the Rules of Bankruptcy Procedure and respectfully object to the Proof of Claim filed in this case by "HSBC BANK USA NATIONAL ASSOCIATION AS TRUSTEE UNDDER THE POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1 2005, FREMONT HOME LOAN TRUST 2005-A" (hereinafter "HSBC") with contact to be made to Litton Loan Servicing, LP (hereinafter "Litton Loans" or "Creditor's Servicing Agent") and in support hereof respectfully show unto the Court the following:

1. This case was commenced by the filing of a petition with the Clerk of this court on February 19, 2009.

2. HSBC and/or Litton Loans filed a series of purported proof of claims and amended proof of claims appearing on the claims register (copy attached) as follows:

Date	Claim #	Claimed Arrearage	Amount of Secured Claim
April 17, 2009	3-1	\$26,540.43	\$866,206.39
June 2, 2009	3-2	\$26,540.43	\$866,206.39
June 19, 2009	3-3	\$26,540.43	\$866,206.39

Each proof of claim indicates the basis of the claim as "money loaned (real estate mortgage)" designated as "secured" by "real estate" with no indication of value or identifying features of such Real Estate.

3. The debtor object to the filing of the said Proof of Claim on the basis that the alleged arrearages and basis of the underlying claims set forth in the Proof of Claims and amended proof of claims were not supported by adequate documents, notes, credit applications, account statements, or any other type of written or printed document as required by mandatory official Form B10.

4. Rule 3001(c) of the Bankruptcy Rules provides that when "a claim is based on a writing" the "original or a **duplicate shall be filed with the proof of claim.**" The claim filed by HSBC in this case is fatally defective for failure to comply with this mandatory Rule.

5. The debtor further objects to the filing of the said proof of claim on the basis that no Notice of Assignment, Transfer or Sale of any otherwise valid claim from any otherwise known creditor has been filed.

6. The debtor further objects on the basis that the HSBC falsely represents that the calculations represented on said proof of claim and amended proof of claims include

credits for the amount of all payments made. Attached herewith as was provided to counsel for the purported servicer is a record of payments made to the creditor above that which was required. Specifically, the arrears alleged by the creditor claims no payments were received from the debtor in the months of January 2009 through February 2009 totalling an arrears for principal and interest in the amount of **\$10,337.74**. In fact, as per the attached record of electronic funds transferred the debtor actually paid the following sums:

Date	Amount
01/02/09	\$6876.38
02/02/09	\$6872.38

TOTAL Paid: \$13,748.76

Based on the creditors allegations, the monthly payment should be only \$5168.87. The debtor has in fact over paid and is thus owed a credit of at least \$2000.00.

7. Further attached is a proof of the debtor's March 2009 payment in the amount of **\$7194.00**. The Debtor is at a loss to understand why her payments are being accepted but not credited to her account.

8. In an objection to confirmation of plan dated June 17, 2009 counsel for the creditor's servicing agent again filed a copy of the second amended proof of claim again wrongfully asserting an arrears based on non-payment. It is clear based on the payment history that no inquiry into the allegations was conducted by Attorney Royston Mendoza or the Law firm of Steven J. Baum, PC was conducted prior to the submission of the pleading.

9. In a series of phone calls and a letter presented to Attorney Natalie Grigg of Steven J Baum, PC Debtors counsel disputed the claims and provided copies of the electronic payments made to Ms. Grigg's client, Litton Loans. Despite being confronted with proof of payment, the creditor has failed or otherwise refused to withdraw their claim(s) and credit the debtor for all sums received. This has forced debtors to incur additional legal fees to file this instant objection and take up additional court time to consider the same.

10. The Debtor wishes to convert her chapter 13 filing to a chapter 7 so as to surrender certain secured assets and is now hindered by the false claim as filed by HSBC.

11. The actions and misrepresentations of HSBC and or Litton Loan and or the Law Firm of Steven J. Baum, PC are sanctionable pursuant to §105 and §9011 of the US Bankruptcy Code.

12. That the Law Firm of Steven J. Baum, PC has been admonished with the promise of sanctions before by this court for similar disregard of the accuracy of allegations and accounting of payments. (see In Re Schuessler attached hereto)

WHEREFORE, the debtors pray of the Court as follows:

A. That the Court direct the Chapter 13 Trustee to strike the claim of HSBC;

B. That HSBC be precluded from filing any amended, modified or substitute claim in this case;

C. That the underlying debt be canceled and forever discharged whether or not the debtor receives her Discharge Order in this case;

D. That HSBC and or Litton Loan and or the law offices of Steven J Baum, PC be required to pay the sum of \$2500.00 in legal fees and expenses to the attorney for the debtor; and

E. That the debtor have such other and further relief as the Court may deem just and proper.

This the 23rd day of June, 2009.

Debtor's Counsel
Linda M. Tirelli, Esq.
Law Offices of Linda M. Tirelli
& Westchester Legal Credit Solutions, Inc.
202 Mamaroneck Avenue, 3rd Floor
White Plains, NY 10601
Phone: (914)946-0860 / Fax: (914)946-0870
Primary Email: WestchesterLegal@aol.com

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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IN THE MATTER OF	:	
	:	CHAPTER 13 CASE
BLANCA GARCIA,	:	COURT NO: 09-22229 (RDD)
DEBTOR	:	
	:	COURT DATE:
-----X	:	_____ at __: __AM/PM

**NOTICE OF OBJECTION TO PROOF OF CLAIM
AND OPPORTUNITY FOR HEARING**

**TO: HSBC BANK USA NATIONAL ASSOCIATION AS TRUSTEE UNDDER THE
POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1 2005,
FREMONT HOME LOAN TRUST 2005-A**

AND

LITTON LOAN SERVICING, LP

PLEASE TAKE NOTICE that an Objection to Proof of Claim has been filed by the debtor named above. A copy of the objection accompanies this notice.

**YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THESE PAPERS
CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF YOU HAVE ONE IN
THIS BANKRUPTCY CASE. IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO
CONSULT ONE.**

TAKE FURTHER NOTICE that if you do not want the Court to grant the relief requested by the debtors in their motion, or if you want the Court to consider your views on the motion, you or your attorney must do three (3) things:

1. **File with the court a written response and explaining your position.
File the response at:**

United States Bankruptcy Court
Southern District of New York
300 Quarropas Ave.
White, Plains, NY 10601

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

2. **On or before the date stated above for written responses, you must
also mail or fax a copy of your written request to:**

Linda M. Tirelli, Esq.
Law Offices of Linda M. Tirelli

& Westchester Legal Credit Solutions, Inc.
202 Mamaroneck Avenue, 3rd Floor
White Plains, NY 10601

and to:

Jeffrey L. Sapir, Esq.
Chapter 13 Trustee
300 Knollwood Road
Suite 102
White Plains, NY 10603

3. **Attend the hearing scheduled for _____, at __:__ AM/PM**
in Courtroom Number 520 at the United States Bankruptcy Court, Southern District of New
York located at 300 Quarropas Ave., White Plains, NY 10601.

If you or your attorney do not take these steps, and the Court may decide that you
do not oppose the relief sought in the motion or objection and may enter an order granting
that relief.

This the 23RD day of JUNE, 2009.

Debtor's Counsel
Linda M. Tirelli, Esq.
Law Offices of Linda M. Tirelli
& Westchester Legal Credit Solutions, Inc.
202 Mamaroneck Avenue, 3rd Floor
White Plains, NY 10601
Phone: (914)946-0860 / Fax: (914)946-0870
Primary Email: WestchesterLegal@aol.com

CERTIFICATE OF SERVICE

I, Linda M. Tirelli, attorney for the debtor, hereby certifies to the Court as follows:

1. I am not a party for the foregoing proceeding;
2. I am not less than 18 years of age;
3. I have this day served a copy of the foregoing **OBJECTION TO PROOF OF**

CLAIM AND NOTICE OF OPPORTUNITY FOR HEARING on all parties in interest by placing the same in an envelope, first-class mail, postage prepaid, addressed to each person at his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession as follows:

HSBC BANK USA NATIONAL ASSOCIATION AS TRUSTEE UNDDER THE POOLING AND
SERVICING AGREEMENT DATED AS OF FEBRUARY 1 2005, FREMONT HOME LOAN TRUST
2005-A **c/o** LITTON LOAN SERVICING, LP
Bankruptcy Department
4828 Loop Central Drive
Houston, TX 77081-2226

Natalie Grigg, Esq. and Royston Mendoza, Esq.
c/o Steven J. Baum, PC
220 Northpointe Parkway, Suite G
Amherst, NY 14228

And via the Court's Electronic Case Filing System to:

Steven J. Baum, PC, Attorney for the Creditor's Servicing Agent
220 Northpointe Parkway, Suite G
Amherst, NY 14228

Jeffrey L. Sapir, Esq.
Chapter 13 Trustee
300 Knollwood Road
Suite 102
White Plains, NY 10603

4. To the best of my knowledge, information and belief, the parties in interest are not infants or incompetent persons;

5. Service as outlined herein was made within the United States of America.

This the 23rd day of June, 2009.

Debtor's Counsel
Linda M. Tirelli, Esq.
Law Offices of Linda M. Tirelli
& Westchester Legal Credit Solutions, Inc.
202 Mamaroneck Avenue, 3rd Floor
White Plains, NY 10601
Phone: (914)946-0860 / Fax: (914)946-0870
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IN THE MATTER OF	:	
	:	CHAPTER 13 CASE
BLANCA GARCIA,	:	COURT NO: 09-22229 (ash)
DEBTOR	:	
-----X	:	

**ORDER DISALLOWING CLAIM
FILED BY HSBC BANK USA NATIONAL ASSOCIATION AS TRUSTEE UNDDER
THE POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1
2005, FREMONT HOME LOAN TRUST 2005-A**

THIS CAUSE coming on to be heard, and being heard, before the undersigned Honorable Robert D. Drain, Judge of the United States Bankruptcy Court for the Southern District of New York, pursuant to the objection to the claim and amended claims of the creditor named above filed by the debtors; and

IT APPEARING to the undersigned that this court has jurisdiction over the parties and over the subject matter of this objection; and

IT FURTHER APPEARING to the undersigned that all parties in interest received notice of this objection and of the time, date and place of this hearing and that no such parties have filed any timely objections or otherwise appeared in opposition to the said objection and that the time for filing any such objection has expired; and

IT FURTHER APPEARING to the undersigned that the relief requested by the debtor in her objection is consistent with the applicable provisions of Title 11 of the United States Code and that the debtor has established good and sufficient cause to grant said relief; and

IT FURTHER APPEARING to the undersigned that the objection of the debtors to the proof of claim of HSBC BANK USA NATIONAL ASSOCIATION AS TRUSTEE UNDDER THE POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1 2005, FREMONT HOME LOAN TRUST 2005-A should be sustained; and

IT FURTHER APPEARING to the undersigned that the Chapter 13 Trustee should and is hereby directed to strike the claim of by HSBC BANK USA NATIONAL ASSOCIATION AS TRUSTEE UNDDER THE POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1 2005, FREMONT HOME LOAN TRUST 2005-A; and

IT FURTHER APPEARING to the undersigned that HSBC BANK USA NATIONAL ASSOCIATION AS TRUSTEE UNDDER THE POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1 2005, FREMONT HOME LOAN TRUST 2005-A should be and is hereby precluded from filing any amended, modified or supplemental proof of claim in this case; and

IT FURTHER APPEARING to the undersigned that any and all underlying debt to HSBC BANK USA NATIONAL ASSOCIATION AS TRUSTEE UNDDER THE POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1 2005, FREMONT HOME LOAN TRUST 2005-A should be forever discharged and canceled as a result of the entry of this order; and

IT FURTHER APPEARING to the undersigned that HSBC BANK USA NATIONAL ASSOCIATION AS TRUSTEE UNDDER THE POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1 2005, FREMONT HOME LOAN TRUST 2005-A be and it is hereby directed to pay within 5 days of the date of the entry of this order the sum of \$2500.00 to the attorney for the debtors; and

IT IS THEREFORE SO ORDERED.

HONORABLE Robert D. Drain,
BANKRUPTCY JUDGE

DATE

*This Order has been signed electronically. The judge's signature and court's seal appear at the top of the Order.

CERTIFICATE OF SERVICE

Linda M. Tirelli, attorney for the debtor, hereby certifies to the Court as follows:

1. I am not a party for the foregoing proceeding;
2. I am not less than 18 years of age;

3. I have this day served a copy of the foregoing **ORDER DISALLOWING CLAIM FILED BY HSBC BANK USA NATIONAL ASSOCIATION AS TRUSTEE UNDER THE POOLING AND SERVICING AGREEMENT DATED AS OF FEBRUARY 1 2005, FREMONT HOME LOAN TRUST 2005-A AND NOTICE OF OPPORTUNITY FOR HEARING** on all parties in interest by placing the same in an envelope, first-class mail, postage prepaid, addressed to each person at his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession as follows:

HSBC BANK USA NATIONAL ASSOCIATION AS TRUSTEE UNDER THE POOLING AND
SERVICING AGREEMENT DATED AS OF FEBRUARY 1 2005, FREMONT HOME LOAN TRUST
2005-A **c/o** LITTON LOAN SERVICING, LP
Bankruptcy Department
4828 Loop Central Drive
Houston, TX 77081-2226

Steven J. Baum, PC, Attorney for the Creditor's Servicing Agent
220 Northpointe Parkway, Suite G
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And via the Court's Electronic Case Filing System to:

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Jeffrey L. Sapir, Esq.
Chapter 13 Trustee
300 Knollwood Road
Suite 102
White Plains, NY 10603

4. To the best of my knowledge, information and belief, the parties in interest are not infants or incompetent persons;

5. Service as outlined herein was made within the United States of America.

This the 23rd day of June, 2009.

Debtor's Counsel
Linda M. Tirelli, Esq.
Law Offices of Linda M. Tirelli
& Westchester Legal Credit Solutions, Inc.
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White Plains, NY 10601
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